IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Criminal Application No.30 of 2007

Mr.Rachhpal Singh — Applicant
Vs.
The State of Maharashtra & ors. — Respondents

Mr.M.K.Kocharekar with Mr.Rajeev Sawant for applicant.
Mr.P.D.Desai for resp.no.1.
Mr.S.R.Shinde, APP for State.

CORAM: B.H.MARLAPALLE, J.

July 23, 2007.

P.C.

1. Heard Mr.Kocharekar, the learned counsel for the applicant who has been impleaded as accused no.4 in Criminal Case No.4152/SS/2005 before the learned Metropolitan Magistrate, 43rd Court at Borivli, Mumbai for the offence punishable under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881. The learned Magistrate was pleased to issue process on 28/8/2005 and it was challenged in Criminal Application No.6946 of 2005 before this Court. The said application was disposed with liberty to the applicant to approach the Sessions Court by following the decision of this Court in the case of V.K. Jain and ors. v. Pratap V. Padode **[2005 (3) Mh.L.J. 778]**. Accordingly the applicant filed Revision Application No.1573 of 2005 under

Section 397 of Cr.P.C. and the same has been dismissed by the learned Addl. Sessions Judge, Greater Bombay as per his judgment and order dated 30/9/2006. In fact it would be appropriate for the applicant to challenge the Revision Court's order in a writ petition under Article 227 of the Constitution and it would be impermissible in law to seek to invoke the inherent powers of this Court under Section 482 of Cr.P.C., unless the Revision Court's order is prayed to be quashed and set aside, which could be done in a writ petition under Article 227 of the Constitution.

2. Be that as it may, the only plea raised by the applicant before the Revision Court and as stated in his letter dated 20/7/2005 is that he had resigned from the partnership of M/s. Subhasree Distributors on 30/10/2003. It appears that the complainant-Company i.e. M/s. Ajanta Pharma Ltd. appointed M/s. Subhasree Distributors as its consignee and supplied goods worth Rs.83,22,000/- and in discharge of that liability M/s.Subhasree Distributors issued cheque No.757710 dated 31/5/2005 for a sum of Rs.5 lakhs. The said cheque came to be dishonoured and, therefore, the company filed a

criminal complaint as noted hereinabove.

3. On the plea of the applicant's resignation from the partnership firm on 30/10/2003 the revision Court recorded that there were conflicting statements made by the applicant on one hand and M/s.Subhasree Distributors on the other hand. At the first instance it was tried to be made out that the applicant had joined the said partnership firm on 13/8/2003 and he resigned and the resignation was accepted on 30/10/2003. The cheque no.757710 which was dishonoured was dated 31/5/2005 drawn on Syndicate Bank, Kolkata for a sum of Rs.5 lacs and it was dishonoured on 10/6/2005 on the grounds of "Funds insufficient". The documentary evidence brought before the Revision Court indicated that on 1/10/2003 the applicant joined the firm as a partner (letter at Annexure "B" dated 14/10/2003). There was another letter dated 24/6/2005 signed by the accused no.2 informing the Company that accused no.4 had already retired on 17/8/2003. It was under these conflicting averments and the prima facie documentary record, the learned Judge of the Revision Court held that the plea of the accused no.4 that he had already resigned from the partnership and was not a partner of the

firm on the date the cheque was issued required to be gone into by adducing evidence. It also noted that the accused no.4 was a senior IPS Officer and he had retired from the post of Director General of Police, State of West Bengal and prima facie there appeared to be some apprehension to believe that he was misusing his resources to create documents about his resignation from the partnership firm. No fault could be found with the apprehension expressed by the Revision Court and the view it has taken that the plea of resignation from the partnership firm is required to be proved by adducing evidence before the Court.

4. Hence this application must fail at the threshold and the same is hereby rejected summarily.

Ad-interim order, if any, stands vacated.

(B.H.MARL